

MEMORANDUM

TO: MIKE MATTHES, CITY MANAGER  
MAYOR AND CITY COUNCIL MEMBERS  
FROM: ELLEN LOCURTO-MARTINEZ, CHAIRWOMAN, CPRB  
KEN BURTON, CHIEF OF POLICE  
REF: PROPOSED CHANGES TO CPRB ORDINANCE  
DATE: MAY 14, 2011

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During our recent training at the Office of Citizen Complaints (OCC) in Kansas City, Missouri I was exposed to a bulk of helpful information concerning the citizen's complaint process. The OCC has been operating in Kansas City since 1969 and is considered a model program throughout the country. After attending the training and reviewing the documents they provided to us I am recommending several important changes to our existing ordinance governing the Citizens' Police Review Board.

The attached document details the changes I believe need to be made in order to improve the process for everyone involved.

It is my hope that you will strongly consider these changes as I feel very confident they will greatly improve the entire process.

- **Section 21-45 Definitions and Rule of Construction**

- **Problem**-there is no definition of misconduct given. This raises the question as to what misconduct is and is not. Defining this gives clear direction to the IA Unit, and later the Board, when analyzing a complaint.
- **Recommendation**-include the specific definition as listed in Missouri State Statute RSMo 590.653 pertaining to Police review Boards.

Section 21-45 Definitions and rule of construction.

The following definitions and rules of construction apply to this article:

“Board,” when not otherwise specified, means the citizens police review board.

“Complainant” means a person who files a complaint with the police department against a police officer.

“Complaint” means a written statement alleging misconduct of a police officer involving interaction with the public.

“Notice” shall be considered given when it is hand delivered or three (3) business days after it is mailed.

“Police officer” and “officer” means a commissioned law enforcement officer, other than the chief of police, who has the power of arrest and who serves in the Columbia police department.

“Misconduct” is defined as excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. (RSMo 590.653)

(Ord. No. 20331, § 1, 7-20-09)

**Editor's Note:** The authority of the Citizens Police Review Board to review appeals from the police chief's decisions on alleged police misconduct shall only apply to decisions made by the police chief after January 1, 2010.

- **Section 21-48 Administration and training**

- **Problem**-this section does not adequately address the need for ongoing training by Board members, and gives little direction as to what “orientation and training” specifically is. It also only requires one ride along with a police officer during the entire course of the members’ tenure on the Board. The lack of training (or even the perceived lack of training) decreases the board’s credibility with the police officers and the community.
- **Recommendation**-set specific standards for training and create appropriate training programs as needed. Require ongoing training, not just orientation training. On a quarterly basis require Board members spend a minimum number of hours riding with a Columbia police officer. Communicate the specific training sessions to the community and invite them to attend as well.

Section 21-48 Administration and training.

- (a) The city manager shall designate staff for the administration of the board.
- (b) New board members shall participate in ~~orientation and training~~ the CPRB Orientation Training Program and attend ongoing quarterly training that includes review of the police professional standard unit’s Internal Affairs Unit’s operating policies and procedures and ~~a ride along~~ quarterly ride alongs with police officers. Training shall also include topics suggested by NACOLE in its recommended orientation and training for board members.
- (c) The CPRB Orientation Training Program shall consist of: (NACOLE, 2009)
  - 1. Civilian Oversight of Law Enforcement
    - a) Civilian Oversight of Law Enforcement
    - b) Models of Civilian Oversight
  - 2. Local Oversight Agency
    - a) Historical Account Leading to establishment of the oversight agency
    - b) Charter, Ordinance, Municipal Code establishing oversight agency
    - c) Community Expectations of Oversight Agency
    - d) Local Government Expectations of Oversight Agency
  - 3. Legal Considerations
    - a) Public records and public meeting laws, Sunshine Law
    - b) Confidentiality requirements

- c) State / Local Laws relating to peace officers' personnel actions, rights and privacy
- d) Case law concerning stops & detentions, search, seizure and arrest, rights of arrested persons
- e) Steps in the criminal justice process: arrest, booking, arraignment, bail, hearings, trial

#### 4. Local Law Enforcement Agency

- a) Organization, history, and cultural evolution of the law enforcement agency
  - Role and responsibilities of patrol, custodial and specialized units
  - Chain of command and supervisory responsibilities
  - Written communication system and training procedures
- b) Patrol practices and procedures
  - Duties of patrol officers, sergeants and managers
- c) Rules of conduct for officers
- d) Agency procedures re: detentions and searches of persons and vehicles
- e) Booking, custody and prisoner transport procedures
  - Medical screening
  - Handling and processing of prisoner property
- f) Juvenile procedures
- g) Traffic stop procedures
- h) Use of force guidelines and procedures (lethal and non-lethal).
- i) Investigation and review of shootings and in-custody deaths
- j) First Amendment activities
- k) Training, resources and procedures for dealing with mentally disturbed individuals and individuals under the influence of drugs or alcohol (CIT training program)
- l) Community and cultural awareness
  - Understanding the history, culture, and concerns of communities served by the law enforcement agency
- n) Community relations and outreach

- o) Biased based policing / racial profiling
- p) The complaint, investigative and disciplinary processes
- q) Mediation of complaints
- r) Evaluating credibility and reaching findings
- s) Procedures and practices for misconduct investigations, including interviewing and report writing, collection and preservation of evidence, sources of information, and due diligence standards.

#### 5. Board Procedures

- a) Intake Procedures
- b) Investigative Procedures and Practices
- c) Hearings / Meetings
- d) Case Review, Presentation, Findings
- e) Communications
- f) Policy Recommendations

#### 6. Ridealongs

- a) Minimum quarterly requirements

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- **Section 21-51 Complaints; police chief decision on complaint; appeals to board**

- **Problem**-complaints are taken from a wide variety of people with limited, and sometimes no involvement, in the actual alleged incident. This has led to misuse of the process by special interest and activist groups who are unhappy with the policies of the police department in general.
- **Recommendation**-limit the ability to file a complaint to those who were personally involved in the incident that the complaint stems from, and/or the parent/legal guardian of any person under the age of 17 who was personally involved in the incident the complaint stems from. (KCMO Office of Community Complaints)
- **Problem**-window of opportunity for filing a complaint (currently one year) is too wide. Due to the limited amount of time that important evidence (video/audio recordings) is retained the window should be reduced to more closely match the retention schedule for this evidence. It is often difficult to contact/locate witnesses after such a long period of time and the reliability of their memory can also be questioned.
- **Recommendation**- Reduce the time period to file a complaint to 90 days. Allow extensions to be granted for special circumstances with good cause as determined by either the Chief or the Board. In no case will a complaint be taken more than one year after the date of occurrence. This is more consistent with current retention schedules as well as best practices of other CPRB's. The current retention of untagged audio/video is 60 days.

Section 21-51 Complaints; police chief decision on complaint; appeals to board.

(a) Complaints may be filed with the police department or with the city clerk only by the following:

(1) ~~Any person who is an alleged victim of misconduct of a police officer; or~~ Any person seventeen (17) years of age or older who was personally involved in the occurrence that gives rise to the complaint.

(2) ~~Any family member, friend or attorney of an alleged victim of misconduct of a police officer;~~  
 or The parent or legal guardian of any person under the age of seventeen (17) years of age who was involved in the occurrence that gives rise to the complaint. Such parent or legal guardian must accompany the person under seventeen (17), will be listed as a co-complainant, and must sign the complaint form.

~~(3) Any person who witnessed alleged misconduct of a police officer in person; or~~

~~(4) Any resident of Boone County.~~

(b) The city clerk shall promptly forward complaints to the police chief. Complaints must be filed within ~~one (1) year~~ ninety (90) days from the date of the alleged police officer misconduct. The board shall take no action on a complaint alleging misconduct that the police department is treating as a criminal matter unless and until the police determines that the officer's alleged conduct was not criminal or a prosecutor has declined to prosecute the alleged offense or a prosecution of the alleged offense has concluded.

(c) Upon a showing of special circumstances that demonstrate good cause for accepting an untimely complaint, the chief of police or the board may accept a complaint more than 90 days, but in any event, not more than one (1) year after the date of occurrence.

(d) Unless the complaint has been withdrawn or the police officer is no longer employed by the city, the complaint investigation process shall conclude with a decision by the police chief that the complaint is unfounded (acts complained of did not occur or were misconstrued), the complaint is not sustained (insufficient facts established to either prove or disprove the acts complained of), the complaint is sustained (sufficient facts established to prove misconduct) or the officer is exonerated (acts complained of occurred but were justified, lawful and proper) . If the complaint is sustained, the police chief shall take appropriate disciplinary action.

( e ) The police chief shall promptly give written notice of the decision and any disciplinary action to the police officer and the complainant. The notice shall include information on the right and manner of appealing the decision of the chief to the citizens police review board.

( f ) Both the police officer and the complainant have the right to appeal the police chief's decision to the board. An appeal to the board must be made in writing and delivered to the city clerk. The clerk must receive the appeal within twenty-one (21) days after the notice of the chief's decision was given. The appeal must be either hand delivered to the office of the city clerk or sent to the city clerk by United States mail, facsimile machine or electronic mail.

( g ) When an appeal has been filed, the city clerk shall promptly notify all board members and the police chief. The police chief shall promptly forward to each board member a copy of all police department records pertaining to the complaint and the investigation of the complaint.

(Ord. No. 20331, § 1, 7-20-09; Ord. No. 20722, § 1, 8-16-10; Ord. No. 20764, § 1, 9-20-10)

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## Section 21-52 Board review and recommendation

- **Problem**-to date, the board has interviewed/heard comments from witnesses as a regular part of each complaint, even though no deficiencies in the IA investigation have been identified and communicated to the chief. This in turn has caused complainants, witnesses and officers to “testify” in a very public forum about the complaint, drawing increased scrutiny and media attention not only to the board and the police department, but also to the complainant, witnesses and individual officers. The unintended result is a lengthy appeal process and well founded hesitation of complainants/witnesses to come forward, even when a very legitimate complaint or issue is at hand, in order to avoid the public attention and scrutiny.
- **Recommendation**-use the interview (testimony) provision of the appeal sparingly. If the board does not locate deficiencies in the IA investigation interviews should not be conducted unless special circumstances apply, and then in closed session. Add a provision to the ordinance to allow the board to go into closed session when interviews/testimony are deemed necessary. If the IA investigation is lacking, the board should request specific action from IA.
- **Problem**-the findings of the board are very vague and not limited to categories or anything consistent with the IA category of findings. This causes confusion on all sides and does not provide clarity to the complainant, the officers, or the community on the points or reasons why or why the board does not concur with the chief, thus increasing the appearance of the “us vs. them” philosophy.
- **Recommendation**-the board and the IA Unit should use the same, specific categories of findings. (Sustained, Not Sustained, Exonerated, Unfounded)

## Section 21-52 Board review and recommendation.

(a) The board shall review the record of the investigation and may request the police chief to order further investigation. Subject to the availability of appropriated funds, the city shall contract with independent investigators to assist the board in its investigations of alleged police misconduct.

(b) The board, as part of the review of an appeal, may interview and hear comments from witnesses to the incident under ~~investigation~~ review. **At the request of either party in the complaint, or upon a two-thirds (2/3) majority vote of the board, the interviews shall take place in a closed session.** The board shall not allow comments by the general public as part of the review.

(c) The police chief and all police officers shall cooperate with the board in its review of appeals from the police chief’s decision. Cooperation shall include, but not be limited to, appearing before the board upon request and answering all questions honestly and thoroughly. Failure to cooperate shall be grounds for disciplinary action up to and including dismissal.

(d) The board shall provide timely updates on the progress of the review and any follow-up investigation to the complainant and the police officer, unless the specific facts of the review and investigation would prohibit such updates.



(e) The board may decline further action on an appeal if it determines that the alleged acts of misconduct are false and that the complainant knew they were false when the appeal was filed.

(f) After completing its review and investigation, the board shall report its findings and recommendations to the city manager, the police chief, the police officer and the complainant.

(g) If the board agrees with the police chief's disposition of the complaint, it shall give notice to the police officer and the complainant that they have the right to appeal the chief's decision as provided in section 21-53.

(h) If the board recommends a disposition of the complaint other than the disposition made by the police chief, the chief shall have ten (10) business days to reconsider the original decision and either reaffirm or modify it. The chief shall give written notice of the decision to the board, the city manager, the police officer and the complainant. The police chief shall also give notice to the police officer and the complainant that they have the right to appeal the chief's decision as provided for in section 21-53. If the chief takes no action within ten (10) business days after the date of the board's findings and recommendation, the original decision is automatically reaffirmed and the board shall give notice to the police officer and the complainant that they have the right to appeal the chief's decision as provided for in section 21-53.

(Ord. No. 20331, § 1, 7-20-09)

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- **Section 21-54 Open records and meetings**

- **Problem**-the simple filing of a complaint triggers an automatic opening of records that are otherwise closed by law, including police officer personnel files and closed criminal reports. Officers feel more exposed to personal attack and scrutiny than other city employees whose files are not open. Citizens who may not even be aware, or involved in, the filing of the complaint (see 21-51) are subject to having records about them which are otherwise closed by law, opened by third-party or anonymous complainants.
- **Recommendation**-eliminate section 21-54(a) from the ordinance and treat these records as is already prescribed under Chapter 19 and the Missouri Sunshine Law. This would allow the board to review the relevant records, but prevent the records from being open.
- **Problem**-the board is prohibited from meeting in closed session. This discourages, and may even prevent, complaints by citizens/victims who do not want to discuss the particulars of their complaint in an open forum (mental health issues, family disputes, juvenile matters, etc.) It also allows no mechanism for the board to discuss disciplinary and other personnel matters of officers discretely, and with the interests of privacy of the officer in mind.
- **Recommendation**-allow the board to meet in closed session as requested (see 21-52 revision), and any time a personnel matter is discussed.

Section 21-54 Open records and meetings.

- (a) ~~Notwithstanding the provisions of section 2-25.3, All records pertaining to complaints filed against police officers alleging misconduct of the police officer shall be open records, except those closed by state or federal law and except that records or portions of records that would disclose the identity of an officer working undercover shall be closed.~~ **fall under the provisions of 2-25.3, as well as the applicable provisions of the Missouri Sunshine Law.**
- (b) (b) The board shall ~~not~~ meet in closed session to discuss or hear statements concerning alleged non-criminal misconduct of police officers, **when requested by the complainant(s), the involved officer(s), or upon a two-thirds (2/3) majority vote of board members.** ~~except to the extent that the subject matter of the discussions or statements, under state or federal law, cannot be discussed or made in an open meeting and except that the board shall meet in closed session to discuss or hear statements that would involve disclosure of the identity of an officer working undercover.~~

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